



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05038
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 17, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Questionnaire for Sensitive Position, (SF 86) on March 11, 2006. On September 21, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 6, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 9, 2008. A notice of hearing was issued on January 31, 2008, scheduling the hearing for February 19, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented no exhibits. However, she did testify on her own behalf. The record remained open until March 2, 2008, to allow the Applicant to submit additional supporting documentation. She did not submit any additional documentation. The official transcript (Tr.) was received on February 28, 2008.

FINDINGS OF FACT

The Applicant is 48 years old. She is employed by a defense contractor as a Maintenance Custodian and is seeking to obtain a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

In 2002, the Applicant quit her job at a book binding factory because the glue that she had to work with was having a negative effect on her hands. Her wages were also being garnished by one of her creditors who had obtained a judgment against her. This left her without financial support and the debts she had at the time went unpaid. During this period, she lived with her son who took care of her. She was not employed again until 2005, when she started working for her current employer.

The Applicant admitted that she is indebted to a creditor for a judgment that was entered against her in the amount of \$10,060.00. This debt arose out of a situation in February or March 1999, when she co-signed for a car for her daughter. Her daughter made the payments for a while, and then at some point decided that she did not want the car and stopped making the monthly payments. The car was voluntarily repossessed. (Tr. pp. 22-25). The Applicant believes that she should not be held responsible for the entire amount of the judgment because the car was sold at auction by the creditor for \$4,000.00. Her sister has been disputing the debt for her. (Tr. p. 26)

The Applicant is also indebted to the following creditors for accounts that have been sent to collection: a creditor in the amount of \$218.00, a creditor in the amount \$45.00, a creditor in the amount of \$273.00, a creditor in the amount of \$185.00, a creditor in the amount of \$464.00, a creditor in the amount of \$3,218.00 and a creditor in the amount of \$465.00. (See Government Exhibits 3, 4,5 and 6).

The Applicant currently lives with her oldest daughter and pays about \$250.00 a month toward rent and utilities. She pays her car insurance of \$61.00 a month and has no other monthly bills besides her cell phone, food and gas. She earns \$9.50 an hour and brings home approximately \$875.00 per month. At the end of the month she has between \$300.00 and \$350.00 that could be used to pay her delinquent debts. (Tr. pp. 50-55). She plans to pay each of her delinquent debts, one at a time, until all of them are paid in full.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

18. The Concern. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, a security clearance is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for such access may be involved in instances of financial irresponsibility which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of

the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The Applicant is indebted to nine separate creditors in the total amount of approximately \$11,800.00. Since 2005, she has been working full time for her current employer, however, with respect to her past due debts, she has done nothing to resolve them. At the present time, she remains indebted to each of her creditors and is responsible for the judgment that was entered against her. She has failed to demonstrate a track record of financial responsibility, or that she has resolved her financial indebtedness. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Upon review of her financial statement, it appears that she has some disposable income at the end of the month to pay her delinquent debts. However, she has not yet begun the process. There is no evidence of financial rehabilitation at this time. Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and *19(c) a history of not meeting financial obligations* apply. None of the mitigating conditions apply. Her financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge